



MEMORANDUM

TO: Mayor and Council Members

FROM: Rosie Truelove, Director, Neighborhood Housing and Community Development

DATE: February 23, 2018

SUBJECT: City Council Resolution 20170803-057 regarding Fair Housing

On August 3, 2017, Council passed Resolution No. 20170803-057 (Resolution). The Resolution directed the City Manager to provide an assessment of whether 4% or 9% Low Income Housing Tax Credit applicants' proposed projects are consistent with the Fair Housing Act (and associated local plans) and to consider a scoring matrix as an evaluation tool. The purpose of this memo is to inform Council of actions completed regarding subject Resolution.

Fair Housing Assessment

In May 2015, the City of Austin published its federally-required Analysis of Impediments to Fair Housing, which identified local barriers to fair housing. The accompanying Fair Housing Action Plan identified specified actions, outcomes, and timelines to overcome those barriers.

In April 2017, City Council adopted the Austin Strategic Housing Blueprint, which establishes a goal of creating or preserving 60,000 affordable units over the next 10 years. The Strategic Housing Blueprint also establishes goals by city council district, in order to ensure geographic distribution and equity in affordable housing throughout the city.

In December 2017, City Council approved a contract to conduct an analysis of Fair Housing issues in the Austin region that will be completed by the end of 2018. The analysis is foundational to the City's Five Year U.S. Department of Housing and Urban Development (HUD) Consolidated Plan, which begins in 2019. Consolidated Plans and Annual Action Plans are required as the City's applications for HUD funding, which has averaged approximately \$11 million annually in recent years.

For more than 10 years, the City of Austin has used the Kirwan Institute's Opportunity Mapping to rank areas from "Very Low" to "Very High" opportunity. This index has helped to inform the geographic siting of affordable housing. Applicants for city funding can receive between five and 25 points (depending on the project's location) out of a total possible score of 165 (Acquisition and Development) or 240 (Rental Housing Development Assistance).

Because NHCD wants a more in-depth understanding of neighborhoods and the opportunities they provide for residents, NHCD is currently exploring Opportunity360 (developed by nonprofit Enterprise Community Partners) as a potential model for measuring opportunity. Opportunity360 measures both

pathways (mechanisms or ladders that lead to higher opportunity outcomes) and outcomes of opportunity (desirable characteristics that a neighborhood exhibits) at the census tract level. This new tool is more comprehensive and nuanced than the Kirwan Institute's Opportunity Mapping. The advantage of the Opportunity360 tool is that it is (1) free and accessible; (2) based on more than 150 data metrics; (3) updated on a quarterly basis; and (4) encourages a holistic investment strategy to increase opportunity by neighborhood. The tool also provides an analysis and rating of a tract's different dimensions of opportunity including health, transportation, and social capital. Staff believe this method is how a proposed project's fair housing status can be assessed and operationalized.

NHCD has begun incorporating Opportunity360 reports into its Development Information Packets, which are provided as backup when affordable housing developments (including 4% and 9% LIHTC projects) are requesting a resolution from City Council.

LIHTC Background

The primary source of funding for affordable housing in the City of Austin is the Low Income Housing Tax Credit program (LIHTC). The competitive 9% LIHTC program is governed by the Qualified Allocation Plan (QAP). While the QAP changes every year, the competitive nature of the program has ensured that prospective projects are located in highly desirable areas (from both a market and an opportunity perspective).

The noncompetitive 4% LIHTC program follows similar rules and regulations but results in less funding (equity) and a relatively larger scale housing product. Typically 4% LIHTCs are combined with Private Activity Bonds and serve households at 60% MFI or below, not reaching deeper levels of affordability. The economics dictate the developments, which are typically larger (approximately 200-250 units), garden style, with surface parking.

LIHTC Siting in Higher Opportunity Areas

In December 2017, NHCD staff gathered a group of LIHTC developers to discuss reasons for geographic siting and how to potentially incentivize siting of developments in higher opportunity areas. Participants included development team members from a variety of professions, including engineering, land use, legal, public developers, and private developers, as well as representation from affordable housing advocacy groups, such as Texas Low Income Housing Information Services and Austin Tenants' Council.

In recent years, there has been a marked increase in the number of 4% LIHTC projects locating on the periphery of the city's boundaries. The only recent 4% LIHTC project in the urban core has been Aldrich 51 (in the Mueller development). Aldrich 51 includes 240 units, 63 of which are deeply affordable and were subsidized with \$2 million in general obligation bonds. In addition to receiving a direct subsidy, Austin Housing Finance Corporation (AHFC) is a development partner with DMA Development. AHFC owns the land, thereby taking it off the property tax rolls and facilitating lower rents.

During the December 2017 meeting, developers cited a variety of reasons for their site location decisions, namely (1) cost of land; (2) city regulations, including impervious cover, tree protections, and compatibility; and (3) fees, such as parkland dedication fee (which is partially waived for affordable housing but recently increased significantly on a per-unit basis).

At the December 2017 meeting, stakeholders discussed strategies for incentivizing affordable housing in higher opportunity areas. Recognizing that any strategies proposed would require additional legal review, the ideas discussed included the following:

Subsidy. Direct subsidy could offset the associated expenses of locating affordable housing in a high opportunity area. Recognizing that land costs (and, thus, the cost per unit) would be higher, the City could use its Rental Housing Development Assistance funding (currently funded with a combination of federal and local funds) to incentivize additional development in high opportunity areas. It is important to note that the \$65 million 2013 General Obligation bond dollars have all been obligated, so there is limited funding currently available.

Land. Finding affordable land that would fit within a highly proscribed LIHTC proforma is a seemingly insurmountable barrier. When the city (or another public entity) owns the land – and is a patient owner/seller – affordability can be incorporated into the transaction. The City would need to strategically identify and, if necessary, purchase suitable land in high opportunity areas and dedicate it for affordable housing. A variety of City Council resolutions have asked staff to explore potential options among existing city-owned parcels. In addition, the 2018 Bond Election Advisory Task Force is exploring potential funding for strategic land acquisition for affordable housing.

Expedited Review. The value of expedited and/or preferential review is enormous. The December 2017 stakeholder meeting included a discussion of the SMART Housing program's original intention for expedited review, as well as the DSD's current expedited plan review. As originally imagined under the SMART Housing program, legally-restricted affordable housing should have priority for site plan and building permit review, including a coordinated review by various city departments. The City could offer true expedited review – at no cost – to developers of legally-restricted affordable housing in high opportunity areas.

Regulatory Waivers. The December 2017 stakeholder meeting included a lengthy discussion of regulatory costs that disproportionately impact land west of IH-35. These costs include impervious cover limits, cut and fill variances, the tree ordinance, and the SOS ordinance. Citywide land use regulations such as compatibility and impact fees such as parkland dedication fees were also cited as a reason for developing outside of the city's jurisdiction. To incentivize affordable development in high opportunity areas, the city could offer fee waivers and/or regulatory relief and/or variances to accommodate affordable housing in desirable areas. While the city's SMART Housing program includes limited fee waivers, those waivers would need to be expanded significantly in order to incentivize development in high cost/high opportunity areas.

All of the ideas discussed at the December 2017 meeting would require further legal review for feasibility. Should City Council choose to pursue any of the potential strategies, NHCD will initiate a discussion and analysis with legal staff.

The City has executed a contract with consultants for the development of an implementation plan for the Strategic Housing Blueprint. The implementation plan will include a resource and gap analysis for each of the income-based goals for unit production established in the Strategic Housing Blueprint. Identification of resources and regulatory incentives is anticipated to be included in the implementation plan.

Tenant Protections

Federal regulations governing the LIHTC program incorporate a variety of tenant protections, including the following:

- Landlords can only evict or refuse to renew a lease for good cause
- Tenants' increased income does not provide grounds for termination
- Landlords cannot discriminate against tenants based on source of income

Pursuant to City Council Resolution No. 20170615-067, staff researched tenant protections and concluded that for existing tenants with valid leases in effect, the Texas Property Code and the Internal Revenue Code (for properties that will be income-restricted through the use of Low Income Housing Tax Credits and private activity bonds) provide sufficient tenant protections from displacement.

Additional protections identified in the Strategic Housing Blueprint include implementing a Tenant Relocation Assistance Program and protecting renters from discrimination based on source of income. Source of income protection is already embedded in the LIHTC program. Regarding the Tenant Relocation Assistance Program, the city has not identified a dedicated funding source. One additional protection identified in the Strategic Housing Blueprint is pursuing legislation to allow for rent control. This strategy will involve multiple partners, including Intergovernmental Relations, and will require a thorough analysis by the City of Austin's Law Department.

Staff is convening a series of conversations regarding the Housing Developer Assistance Program (including the Rental Housing Development Assistance program for rental housing and the Acquisition & Development Program for ownership housing), the first meeting of which occurred on January 18, 2018. With input from community stakeholders, we will explore potential changes to the programs' scoring criteria and guidelines, including additional tenant protections. Staff anticipates consolidated recommendations will be released in late Spring 2018.

cc: Spencer Cronk, City Manager
Joe Pantalione, Interim Assistant City Manager